
SENATE BILL No. 100

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-14; IC 25-15-9-18; IC 30-5.

Synopsis: Power of attorney for decedent's body. Requires a power of attorney to specifically grant the attorney in fact the power to determine: (1) performance of an autopsy; (2) disposition of the body; and (3) anatomical gifts; for the attorney in fact to possess those powers. Makes conforming amendments.

Effective: July 1, 2009.

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January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 100

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-14-31-26, AS AMENDED BY P.L.102-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 26. (a) Except as provided in subsection (c), the
4 following persons, in the priority listed, have the right to serve as an
5 authorizing agent:

6 (1) An ~~individual~~ **attorney in fact** who possesses a ~~health care~~
7 power of attorney of the decedent, ~~unless if~~ the power of attorney
8 ~~prohibits grants~~ the ~~individual from making~~ **attorney in fact the**
9 **authority to make** plans for the disposition of the decedent's
10 body.

11 (2) The individual who was the spouse of the decedent at the time
12 of the decedent's death.

13 (3) The decedent's surviving adult children. If more than one (1)
14 adult child is surviving, any adult child who confirms in writing
15 that the other adult children have been notified, unless the
16 crematory authority receives a written objection to the cremation
17 from another adult child.



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(4) The decedent's surviving parent. If the decedent is survived by both parents, either parent may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other parent.

(5) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.

(6) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through (5) ~~of this section~~ are available:

- (i) a public administrator, including a responsible township trustee or the trustee's designee; or
- (ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

(7) In the absence of any person under subdivisions (1) through (6), any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

- (A) murder (IC 35-42-1-1);
- (B) voluntary manslaughter (IC 35-42-1-3); or
- (C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

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(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the determination referred to in subsection (c)(2).

SECTION 2. IC 23-14-55-2, AS AMENDED BY P.L.3-2008, SECTION 170, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in subsection (d), the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes either of the following:

(1) To be (in the priority listed) one (1) of the following:

(A) An ~~individual~~ **attorney in fact** who possesses a ~~health care~~ power of attorney of the decedent, ~~unless if~~ the power of attorney ~~prohibits~~ **grants** the ~~individual from making~~ **attorney in fact the authority to make** plans for the disposition of the decedent's body.

(B) The individual who was the spouse of the decedent at the time of the decedent's death.

(C) The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the owner of the cemetery receives a written objection to the disposition from another adult child.

(D) The decedent's surviving parent. If the decedent is survived by both parents, either parent unless the cemetery owner receives a written objection to the disposition from the other parent.

(E) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree of kinship is surviving, any person of that degree unless the cemetery owner receives a written objection to the disposition from one (1) or more persons of the same degree of kinship.

(2) To have acquired the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (d), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

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(b) A cemetery owner is not liable in any action for making an interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice that the representation made under subsection (a) by the individual who issued the written authorization was untrue.

(c) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(d) If:

- (1) the death of the decedent appears to have been the result of:
 - (A) murder (IC 35-42-1-1);
 - (B) voluntary manslaughter (IC 35-42-1-3); or
 - (C) another criminal act, if the death does not result from the operation of a vehicle; and
- (2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(e) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (d)(2).

SECTION 3. IC 25-15-9-18, AS AMENDED BY P.L.3-2008, SECTION 185, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection (b), the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:

- (1) An ~~individual~~ **attorney in fact** who possesses a ~~health care~~ power of attorney of the decedent, ~~unless if~~ the power of attorney ~~prohibits~~ **grants** the ~~individual from making~~ **attorney in fact the authority to make** plans for the disposition of the decedent's body.
- (2) The individual who was the spouse of the decedent at the time of the decedent's death.
- (3) The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the licensed funeral director or licensed funeral home receives a

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written objection from another adult child.

(4) The decedent's surviving parent. If the decedent is survived by both parents, either parent has the authority unless the licensed funeral director or licensed funeral home receives a written objection from the other parent.

(5) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree survives, any person of that degree has the authority unless the licensed funeral director or licensed funeral home receives a written objection from one (1) or more persons of the same degree.

(6) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following:

(A) If none of the persons identified in subdivisions (1) through (5) is available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition and internment of human remains.

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2).

SECTION 4. IC 30-5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) An attorney in fact has a power granted under this chapter if the power of attorney incorporates the power by:

(1) referring to the descriptive language in sections 2 through 19

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20 of this chapter; or

(2) citing to a specific section of sections 2 through ~~19~~ 20 of this chapter.

(b) Reference in a power of attorney to the descriptive language in sections 2 through ~~19~~ 20 of this chapter shall be construed as though the entire section is set out in full in the power of attorney.

(c) If powers are similar or overlap, the broadest power controls.

(d) A power of attorney may in writing delete from, add to, or modify in any manner a power incorporated by reference, including the power to make gifts under section 9 of this chapter.

SECTION 5. IC 30-5-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) This section does not prohibit an individual capable of consenting to the individual's own health care or to the health care of another from consenting to health care administered in good faith under the religious tenets and practices of the individual requiring health care.

(b) Language conferring general authority with respect to health care powers means the principal authorizes the attorney in fact to do the following:

(1) Employ or contract with servants, companions, or health care providers to care for the principal.

(2) If the attorney in fact is an individual, consent to or refuse health care for the principal who is an individual in accordance with IC 16-36-4 and IC 16-36-1 by properly executing and attaching to the power of attorney a declaration or appointment, or both.

(3) Admit or release the principal from a hospital or health care facility.

(4) Have access to records, including medical records, concerning the principal's condition.

~~(5) Make anatomical gifts on the principal's behalf.~~

~~(6) Request an autopsy.~~

~~(7) Make plans for the disposition of the principal's body.~~

SECTION 6. IC 30-5-5-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 20. A power of attorney may authorize the attorney in fact to:**

(1) make an anatomical gift on behalf of the principal;

(2) authorize an autopsy of the principal's remains; or

(3) direct the disposition of the principal's remains.

SECTION 7. IC 30-5-10-4, AS AMENDED BY P.L.238-2005, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009]: Sec. 4. (a) Except as provided in subsections (b) and (c), a power of attorney terminates on the death of the principal.

(b) The death of a principal who has executed a written power of attorney does not revoke or terminate the power of attorney as to the attorney in fact or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Unless otherwise invalid or unenforceable, an action taken under this subsection binds the principal and the principal's successors in interest.

(c) The death of a principal who executes a written power of attorney does not revoke or terminate the power of attorney as to authority granted under ~~IC 30-5-5-16(b)(5) through IC 30-5-5-16(b)(7)~~. **IC 30-5-5-20.** An action taken under this subsection binds the principal and the principal's successors in interest, unless the action is inconsistent with a written directive executed by the principal before the principal's death.

(d) Notice from the United States Department of Defense of the death of a principal who has given a power of attorney is official notice of the death of the principal. A report or listing of the principal's being missing or missing in action does not do any of the following:

- (1) Constitute and may not be interpreted as actual notice of the death of the principal.
- (2) Terminate the power of attorney.

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